

**ASSEMBLY BILL**

**No. 1569**

**Introduced by Assembly Member Ackerman**

February 26, 1999

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An act to amend Section 3269 of, to amend the heading of Title 17 (commencing with Section 3269) of Part 4 of Division 3 of, and to add Section 3272 to, the Civil Code, relating to computers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1569, as introduced, Ackerman. Computers: liability for damages: Year 2000 Problem.

Existing law provides immunity from tort liability, subject to certain exceptions, to persons who make gratuitous disclosures of information regarding the Year 2000 Problem, as defined, or potential solutions to that computer problem.

This bill would provide immunity from tort liability and claims for breach of implied warranty, subject to certain exceptions, to suppliers of computer products, as defined, arising from the failure or malfunction of those products due to the Year 2000 Problem, if the supplier satisfies certain requirements relating to repair, replacement, or refund of the computers products by a specified date.

The bill would declare that it would take effect immediately as an urgency statute. The bill would also make related legislative findings and declarations.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of  
2 the following:

3 (a) In the early years of computer programs,  
4 computer memory was at a premium due to limitations  
5 on physical capacity. In order to save precious memory  
6 space, software developers adopted what became the  
7 uniform industry convention of identifying years by two  
8 digits. Subsequent programs continued the convention  
9 for many reasons, some of which include the need for  
10 compatibility, to meet standard based on the two digit  
11 convention, and the anticipation that the computer  
12 product would be replaced or upgraded long before the  
13 year 2000. This market-driven programming standard,  
14 that may be found in a wide variety of software,  
15 computers, and other electronic devices, results in a  
16 present or future inability to accurately store, process,  
17 provide, or receive data relating to a date beyond the year  
18 1999.

19 (b) There has been widespread publicity on the legal  
20 impact of year 2000 noncompliant computer products,  
21 with the legal expenses due to litigation arising from  
22 computer product failures estimated to be in the billions  
23 of dollars.

24 (c) A number of lawsuits have been filed and, in some  
25 of the cases noncontract claims have been made against  
26 suppliers even though there was no injury, no  
27 manifestation of the impact of being year 2000 compliant,  
28 and no allegation that a remedy from the supplier had  
29 been requested and denied. A result of these lawsuits, and  
30 the threat of future lawsuits, has been the incurring of  
31 needless legal expenses and the diminution of the flow of  
32 information concerning companies' ongoing efforts to  
33 provide year 2000 compliant computer products for fear  
34 that any information provided will precipitate or  
35 otherwise be used as evidence in litigation.

36 (d) Accordingly, it is the intent of the Legislature to  
37 encourage suppliers to ensure that both current and  
38 previously licensed or sold computer products are year

1 2000 compliant, and to provide information on repairs,  
2 work-arounds, replacements, or later year 2000 compliant  
3 versions of computer products, while, at the same time,  
4 removing concerns over litigation as an inhibiting factor  
5 to the free flow of information.

6 (e) Furthermore, it is the intent of the Legislature to  
7 provide a safe harbor against noncontract claims for  
8 suppliers that make solutions to the Year 2000 Problem  
9 available.

10 (f) Finally, it is the intent of the Legislature that the  
11 provisions of this act shall be applicable with respect to  
12 any actions that have been filed, but that have not been  
13 fully adjudicated, as of the operative date of this act.

14 SEC. 2. The heading of Title 17 (commencing with  
15 Section 3269) of Part 4 of Division 3 of the Civil Code is  
16 amended to read:

17  
18 TITLE 17. *COMPUTERS AND YEAR 2000*  
19 ~~INFORMATION DISCLOSURES COMPLIANCE~~  
20

21 SEC. 3. Section 3269 of the Civil Code is amended to  
22 read:

23 3269. For purposes of this title, the following  
24 definitions shall apply:

25 (a) “Year 2000 Problem” means any expected or  
26 actual computing, physical, enterprise, or distribution  
27 system complications that may occur in any computer  
28 ~~system, computer program, software application,~~  
29 ~~embedded systems, embedded chip calculations, or other~~  
30 ~~computing application product~~ as a result of the year  
31 change from 1999 to 2000. These complications are often  
32 associated with the common programming practice of  
33 using a two-digit field to represent a year, resulting in  
34 erroneous date calculations, an ambiguous interpretation  
35 of the term “00,” the failure to recognize the year 2000 as  
36 a leap year, the use of algorithms that use the year “99”  
37 or “00” as a flag for another function, or the use of  
38 applications, software, or hardware that are date  
39 sensitive.

1 (b) “Year 2000 compliant” means the present or  
2 future ability of a computer product to accurately store,  
3 process, provide, or receive data from, into, and between  
4 the years 1999 and 2000 and beyond, provided that all  
5 other technology used in combination with the computer  
6 product properly exchanges data with it.

7 (c) “Year 2000 noncompliant” means the present or  
8 future inability of a computer product to accurately store,  
9 process, provide, or receive data from, into, and between  
10 the years 1999 and 2000 and beyond, provided that all  
11 other technology used in combination with the computer  
12 product properly exchanges data with it.

13 (d) “Computer product” means any computer system  
14 or any component thereof, or any computer program,  
15 software application, embedded chip calculation, or  
16 other computing application.

17 (e) “Computer system” means any electronic or  
18 semi-conductor device or collection of devices, including  
19 support devices, networks, and embedded chips, and  
20 excluding calculators that are not programmable, that  
21 contains computer programs or electronic instructions,  
22 and that performs functions, including, but not limited to,  
23 logic, arithmetic, data processing, data storage and  
24 retrieval, or communication, or control of those functions.

25 (f) “Information” means any assessment, projection,  
26 estimate, planning document, objective, timetable, test  
27 plan, test date, or test result related to the  
28 implementation or verification of Year 2000 Problem  
29 processing capabilities of a computer—system, computer  
30 program, software application, embedded systems,  
31 embedded chip calculations, or other computing  
32 application product and intended to solve a year 2000  
33 Problem.

34 ~~(e)~~

35 (g) “Disclosure” and “discloses” means any  
36 dissemination or provision of information without any  
37 expectation or right to remuneration or fee therefor.

38 ~~(d)~~

39 (h) “Person” means any individual, corporation,  
40 partnership, business entity, joint venture, association,

1 the State of California or any of its subdivisions, or any  
2 other organization or any combination thereof.

3 (i) “*Supplier*” means any person who designs,  
4 develops, or manufactures a computer product.

5 SEC. 4. Section 3272 is added to the Civil Code to  
6 read:

7 3272. (a) Notwithstanding any other provision of  
8 law, and unless otherwise agreed, a supplier shall not be  
9 liable for damages in any tort action or any action based  
10 on breach of implied warranty arising directly or  
11 indirectly from the failure or malfunction of a computer  
12 product due to the Year 2000 Problem or any alleged  
13 failure to properly detect, disclose, prevent, report on or  
14 remediate any year 2000 noncompliant computer  
15 products if the supplier does the following:

16 (1) With respect to computer products acquired in or  
17 after 1995, the supplier makes available, in the manner  
18 described in subdivision (f), by September 1, 1999, at no  
19 charge except for delivery and installation charges, a  
20 repair, work-around, or replacement to the computer  
21 product that ensures that the computer product is year  
22 2000 compliant, or a refund of the price of the latest  
23 upgrade or version of the computer product acquired by  
24 the owner or licensee.

25 (2) With respect to computer products acquired after  
26 the year 1989 and before the year 1995, the supplier  
27 provides notice, in the manner described in subdivision  
28 (h), by September 1, 1999, whether there is a repair,  
29 replacement, or later version of the computer product  
30 that is year 2000 compliant, and how that repair,  
31 replacement, or later version, if any, may be obtained.

32 (b) Subdivision (a) shall not be applicable to limit a  
33 supplier’s liability in any action where the plaintiff has  
34 suffered personal injury, other than emotional harm,  
35 arising directly or indirectly from the failure or  
36 malfunction of a computer product due to the Year 2000  
37 Problem or any alleged failure to properly detect,  
38 disclose, prevent, report on or remediate any year 2000  
39 noncompliant computer products.

1 (c) Subdivision (a) shall not be deemed to limit any  
2 breach of contract claims based upon the contract of sale  
3 or license of a computer product. For purposes of this  
4 section, claims based upon breach of implied warranty  
5 shall not be deemed to be contract claims.

6 (d) For purposes of subdivision (a), the date of  
7 acquisition of a computer product by an owner or licensee  
8 shall be the date on which the owner or licensee acquired  
9 the most recent version of the computer product,  
10 including upgrades to that product. The date of  
11 acquisition of a computer product shall not be the date of  
12 any transaction involving the computer product (1) for  
13 which there is no charge, other than delivery and  
14 installation charges; (2) that only results in an increase in  
15 the capacity of an earlier computer product, including,  
16 but not limited to, increased data capacity or an increased  
17 number of users; or (3) in which the license is changed  
18 but the computer product itself is not, including, but not  
19 limited to, a change in the status of the licensee.

20 (e) A supplier shall not be required to comply with the  
21 requirements of paragraphs (1) and (2) of subdivision  
22 (a), and the limitations on liability contained in  
23 subdivision (a) shall nevertheless be applicable, with  
24 respect to any computer product that is no longer in use  
25 or if the license for the computer product has expired or  
26 become extinguished due to the acquisition of an  
27 upgraded or newer version.

28 (f) A supplier shall be deemed to have complied with  
29 paragraph (1) of subdivision (a) with respect to any  
30 computer product if the owner or licensee acquired for  
31 consideration an upgrade or newer version of that  
32 computer product that is year 2000 compliant, if (1) the  
33 upgrade or newer version adds new features to the  
34 computer product, or (2) a refund of the consideration  
35 paid for the upgrade or newer version is made available;  
36 provided that, if there are any users, as of September 1,  
37 1999, that have not acquired an upgrade or later version  
38 for consideration under this subdivision, the supplier has  
39 also made available, at no charge except for delivery and



1 installation charges, the repair or replacement, or later  
2 version required in paragraph (1) of subdivision (a).

3 (g) Repairs, work-arounds, replacements, later  
4 versions, or refunds pursuant to this section shall be  
5 deemed to have been made available if notice thereof,  
6 including information on how to physically obtain a  
7 repair, work-around, replacement, later version, or  
8 refund, or information on downloading the repair,  
9 replacement, or later version from the Internet, is  
10 provided in the manner described in subdivision (h).

11 (h) Any notice required by this section shall be  
12 entitled "California Year 2000 Notice" and shall be given  
13 as follows:

14 (1) By mail or e-mail to each registered user of the  
15 computer product at the most recent address known to  
16 the supplier's registration department.

17 (2) If all owners and licensees of a computer product  
18 are not known to the supplier, by posting the notice until  
19 March 31, 2000, or creating a link to the posting using the  
20 title "California Year 2000 Notice," on the homepage of  
21 the supplier's Internet website.

22 Any notice given pursuant to this section shall be  
23 inadmissible as evidence for any purpose, including, but  
24 not limited to, evidence relating to claims of anticipatory  
25 repudiation, other than proof of the fact that notice was  
26 given.

27 (i) Compliance with the requirements of subdivision  
28 (a) by a supplier may be raised as a defense in any tort  
29 action or action for breach of implied warranty pending  
30 on the effective date of this act against a supplier arising  
31 directly or indirectly from the failure or malfunction of a  
32 computer product due to the Year 2000 Problem or any  
33 alleged failure to properly detect, disclose, prevent,  
34 report on or remediate any year 2000 noncompliant  
35 computer products.

36 (j) Nothing in this section shall be construed to do any  
37 of the following:

38 (1) Recognize, endorse, or suggest the existence or  
39 validity of any purported cause of action.

1 (2) Create a cause of action where none otherwise  
2 existing, or create any obligation to repair, replace, or  
3 provide a work-around or later version for any year 2000  
4 noncompliant computer product.

5 (3) Limit the ability of contracting parties to enter into  
6 agreements as they deem appropriate on the issues of  
7 liability and damages.

8 (4) Affect the validity of contracts, or any provisions of  
9 any contracts, in effect on or before the enactment of this  
10 section.

11 (5) Be indicative of an industry standard relating to  
12 year 2000 compliant computer products in any context,  
13 including with respect to warranty claims of any type or  
14 any claim based on alleged damages or injury resulting  
15 from year 2000 noncompliant computer products.

16 (k) Notwithstanding any other provision of this  
17 section, a supplier shall not be liable, in tort or contract,  
18 for any damage suffered as a result, directly or indirectly,  
19 of any failure or malfunction of any copy of a computer  
20 product that is not validly owned or licensed or any  
21 computer product if the owner or licensee possesses other  
22 copies of that computer product that are not validly  
23 owned or licensed.

24 SEC. 5. This act is an urgency statute necessary for the  
25 immediate preservation of the public peace, health, or  
26 safety within the meaning of Article IV of the  
27 Constitution and shall go into immediate effect. The facts  
28 constituting the necessity are:

29 In order to provide computer suppliers with necessary  
30 protections and to provide consumers with access to year  
31 2000 compliant computer products before the beginning  
32 of the year 2000, when the full impact of year 2000  
33 noncompliance will be realized, it is necessary that this  
34 act take effect immediately.

